



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201529012**
Release Date: 7/17/2015
UIL Code: 501.32-00

Date:
April 22, 2015
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Director, Exempt Organizations

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: February 25, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

O = State Name

P = Date

u dollars= Amount

v dollars= Amount

w = Number

x = Number

y dollars = Amount

UIL:

501.32-00

501.33-00

501.36-01

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code?

No, for the reasons outlined below.

Facts

You were incorporated in the state of O on P as a not for profit corporation. Your Articles of Incorporation state your purpose is to provide housing on a non-profit basis and in pursuance thereof, to acquire, own, improve, develop, operate, manage, sell, convey, pledge, assign, mortgage, lease or rent any real estate and any personal property. The Articles also indicate you have x shares of common stock with a par value of y dollars. There are no provisions for dissolution. Your bylaws state your purpose is to provide your members with housing on a cooperative and non-profit basis while your Form 1023 states your purpose is to provide moderately priced housing to persons aged 55 or over on a cooperative ownership basis. Moreover, you

completed Schedule F indicating you are providing housing to the elderly and that your housing is affordable to a significant segment of the elderly in your community. The Schedule F also indicated the following:

- You do not have arrangements for the healthcare needs of your residents.
- You do not have any arrangements with government welfare agencies or others to absorb all or part of the cost of maintaining residents, who become unable to pay their regular charges.
- Your facility is not designed to meet the physical, emotional, recreational, religious and/or other similar needs of the elderly or handicapped.

You are operating a cooperative apartment building. You own your facility and land on which it sits. Your members buy the number of shares of stock allocated to a specific apartment. Instead of receiving a deed, members receive a stock certificate and a proprietary lease/contract agreement. Shareholders become part owner of the building with rights and obligations for the user and occupancy of an apartment. Stock ownership is lower to moderately priced compared to nonsubsidized housing in the area. Depending on the amenities and condition of the housing unit, shares of stock are in the range of u dollars. The minimum age for stockholders and a tenant is 55.

Per your bylaws, a person applying to become a member stockholder must be approved by affirmative action of your board and at least 75% of the stockholders must ratify this action. Membership entitles that person to occupy the apartment assigned by the board as well as entitles him/her to purchase shares of capital stock in the corporation, which shall be approximately w of the total shares of the corporation. A person may not become a member without becoming a stockholder and acquiring the right to lease an apartment.

Your board will enter into a contract agreement with each member stockholder for his/her apartment. This contract will require the member to pay each month, in advance, his/her pro-rata share of the fixed costs or expenses of owning and operating the property. It will also require each member to maintain their interior at the member's own expense. Maintenance fees for the organization are t dollars per month. They cover various building expenses, including building insurance, trash service, custodial services, water/sewage, laundry facilities, landscaping, snow removal, maintenance and repairs, etc. Changes to the assessed maintenance fees are subject to a vote. You will pay the cost of structural repairs and cost of maintaining the exterior of the building and common areas. You also make assessments and hold votes for major capital improvements, such as building improvements, windows, sidewalks, roofing, etc. Those fees are maintained in a separate bank account and are not available for ordinary maintenance.

Your board shall have the first right to purchase any shares of capital stock should a member withdraw, but is not obligated to do so. It is the duty and obligation of the member withdrawing to find an acceptable purchaser for his/her shares of stock. That member has the right to establish the price and terms upon which he will sell his/her shares as long as they comply with the terms of the bylaws. When selling an apartment, a buyer provides a check to a seller for the balance due. The seller provides the bank with the old stock certificates signed by the seller. The bank issues new stock certificates to the buyer with the buyer's full name and apartment number. After closing, the buyer will sign a contract agreement and receive a copy of your bylaws.

Your board shall have the right to purchase the shares of stock at market value and cancel membership of any member who has died without designating a subsequent purchaser of the apartment, has failed to meet payments for a specified period of time, has failed to pay other obligations to you, or has been found to be unsatisfactory or undesirable for membership after a hearing and vote by your board.

Your revenue comes primarily from membership fees, with insubstantial amounts arising from laundry and vending, and capital gains on sale of stock certificates. Your expenses consist primarily of maintenance expenses, including repairs, custodial services, lawn care, trash service, utilities, pest control, snow removal, landscaping, and window washing. You also have expenses for taxes and licenses, insurance, inspections, rental agency fees, and legal and accounting. Your board currently consists of four individuals.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of Income Tax Regulations holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest.

Revenue Ruling 69-175, 1969-1 CB 149 states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest. Accordingly, it is not exempt from federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 71-395, 1971-2 CB 228 states that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under IRC 501(c)(3). It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Revenue Ruling 79-18, 1979-1 CB 194 states a nonprofit organization that provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is an organization operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U. S. 279 (1945) states that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

The court case Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962), describes a corporation organized by World War II veterans for the purpose of purchasing a government housing project and converting it to cooperative nonprofit housing for members. Individuals become members in the housing unit and the number of members was limited to the number of units. The court held that the organization did not qualify under Section 501(c)(4) of the Code because its activities were of the nature of an economic and private cooperative undertaking. The organization did not promote social welfare because it furnished housing to only a certain group of individuals as opposed to the community as a whole. It was a public spirited but a private endeavor that only provided incidental public benefit.

Application of law

You are not described in Section 501(c)(3) of the Code because you fail both the operational test and the organizational test as per Section 1.501(c)(3)-1(a)(1) of the Regulations.

You fail the organizational test because your purpose clause does not meet Section 1.501(c)(3)-1(b)(1)(i) of the Regulations. You also do not have a valid dissolution provision per Section 1.501(c)(3)-1(b)(4) of the Regulations. This also causes you to fail the organizational test.

You are not operating exclusively for charitable purposes as required under Section 1.501(c)(3)-1(c)(1) of the Regulations. You are operating for the non-exempt private purpose of providing housing on a cooperative basis to members. For example, your members/residents of the building are contractually obligated to pay monthly dues to you. These dues are pooled for the purpose of paying your members' living expenses. This non-exempt purpose is substantial. Moreover, members buy your shares, which give them the right to occupy an apartment in your building. Members can also sell their shares of your stock at market value. Allowing members to buy and sell shares of stock in you for market value is a substantially commercial activity, which is also a substantial nonexempt purpose.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you serve the private interests of your members rather than the general public. Members are responsible to pay you maintenance, repair, and capital improvement fees. You use the fees to cover the cost of operating and maintaining the building for your members including providing insurance.

You are like the cooperative art gallery described in Revenue Ruling 71-395 because you also operate on a cooperative basis for the private benefit of your members. Your members are being directly benefited by your operations which illustrates you are operating for the private purposes of your members.

You are unlike the organization in Revenue Ruling 79-18; although your membership may consist of the elderly you are operating to provide housing to a select few on a cooperative basis. If a member cannot pay fees or other obligations to you, their membership is cancelled. Like Better Business Bureau of Washington, D.C., Inc.

v. United States, 326 U. S. 279, this single, substantial nonexempt purpose destroys your claim for exemption under section 501(c)(3) of the Code.

You are like the organization described in Commissioner v. Lake Forest, Inc., that failed to qualify under Section 501(c)(4) of the Code because you are operating a housing cooperative primarily benefiting a select few individuals. Moreover, your activities are characteristic of an economic and private undertaking; consequently, your activities primarily serve private interests disqualifying you from exemption under Section 501(c)(3) of the Code.

Conclusion

Based on the facts and information provided, you are not organized nor operated exclusively for exempt purposes as required by Sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the Regulations. You are operating for the benefit of your members. Therefore, you do not meet the operational test as required by Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. You do not serve a public rather than a private interest as required by Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892